IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 18TH JULY 2007 / 27TH ASHADHA 1929

CRP.No. 607 of 2005()

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AGAINST THE ORDER DATED 19/03/05 IN IN EP 222/2003 IN OS.494/1998 of PRL.SUB COURT,IRINJALAKUDA

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REVN. PETITIONER: 3RD JUDGMENT DEBTOR

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HARIHARAN, S/O.POOVATHUNKADAVIL
DAMODHARAN, KOTHAMPARAMBU, ALA, KODUNGALLUR.

BY ADV. SRI.K.G.BALASUBRAMANIAN
SMT.AMBILY (PREMKUMAR)

RESPONDENT: DECREE HOLDER

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VYAPARAVIJAYAM HIRE PURCHASE PVT. LTD.,
NADAR BUILDINGS, RICE BAZAR, THRISSUR,
REP. BY ITS DEPUTY CHAIRMAN.

BY ADV. SRI.N.SUKUMARAN
SRI.S.SHYAM
SRI.N.K.KARNIS
SRI.BOBBYMATHEW KOOTHATTUKULAM
SRI.LATHEESH SEBASTIAN

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 18/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A.1611/05 IN CRP.607/05

CLOSED

18.7.07 SD/- PIUS C.KURIAKOSE, JUDGE

/TRUE COPY/

**PIUS C. KURIAKOSE, J.**

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C.R.P.No.607 OF 2005

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DATED THIS THE 18th JULY, 2007

**O R D E R**

The 3rd judgment-debtor, admittedly a military pensioner is aggrieved by the order of the execution court finding that in spite of means he has wilfully neglected to pay the decree debt and directing issuance of warrant for arresting him on that basis.

2. Heard Sri.K.G.Balasubramanian, counsel for the petitioner and Sri.Bobby Mathew, counsel for the respondent.

3. Mr.Balasubramanian submitted that the petitioner has complied with the condition imposed by this Court on 8.6.2005 that a sum of Rs.15,000/- shall be paid by the petitioner to the decree-holder within three weeks from that date. He further submitted that adequate opportunity was not granted by the execution court for producing the pension book. He sought for an opportunity to produce the pension book.

4. Having regard to the circumstances attending on this case, I feel that opportunity can be afforded to the petitioner for producing the pension book, but only on conditions. Accordingly, I set aside the impugned order and direct the execution court to afford opportunity to the petitioner to produce the pension book and convince the court

that the petitioner does not have the capacity to pay even a substantial portion of the decree-debt. Since the matter is going back to the court below, both sides are permitted to adduce whatever evidence they have at their command on the issue. However, the order of remand will be subject to the condition that the petitioner shall pay every month commencing from 16.8.2007 at the rate of Rs.1500/- till such time as the enquiry is completed. The enquiry shall be completed and orders passed by the learned Subordinate Judge at the earliest and at any rate within three months of the petitioner producing copy of this order.

**(PIUS C.KURIAKOSE, JUDGE)**

tgl